

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY WAYNE JOHNSON, JR.,)
)
 Petitioner,)
)
 v.)
)
 ANTHONY HEDGPETH,)
)
 Respondent.)

No. C 11-0495 LHK (PR)

ORDER DENYING MOTION
FOR LEAVE TO PROCEED IN
FORMA PAUPERIS; ORDER
TO SHOW CAUSE

Petitioner, a state prisoner proceeding *pro se*, filed an amended petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254¹ to challenge a disciplinary decision. Petitioner's motion for leave to proceed in forma pauperis is DENIED. The Court orders Respondent to show cause why a writ of habeas corpus should not be granted.

DISCUSSION

A. Standard of Review

This Court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in

¹ The United States District Court for the Southern District of California transferred this action on January 27, 2011, finding this Court was the appropriate venue as Petitioner was confined at Salinas Valley State Prison at the time he filed the instant petition. (Docket No. 8.)

violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975).

A district court shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

B. Petitioner’s Claims

Petitioner alleges that on March 13, 2008, he was improperly found guilty of violating a prison rule against attempted battery on a peace officer. As a result of the disciplinary hearing, Petitioner was assessed 150 days forfeiture of credits. On April 4, 2008, the Institutional Classification Committee imposed a term of confinement in the Secured Housing Unit (“SHU”) for attempted assault on a non-inmate. Petitioner claims that he never had a trial, and was never found guilty of such an offense, and should not have been given a SHU term. Petitioner also claims that he is actually innocent of these charges. Liberally construed, these claims are cognizable on federal habeas review. The Court orders Respondent to show cause why the amended petition should not be granted as to the above issues.

CONCLUSION

1. Petitioner’s motion for leave to proceed in forma pauperis is DENIED. Petitioner must pay the \$5 filing fee within **thirty (30) days** of the date of this order or face dismissal of this action for failure to pay the filing fee.

2. The Clerk shall serve by mail a copy of this order and the amended petition (docket no. 5) and all attachments thereto upon the Respondent and the Respondent’s attorney, the Attorney General of the State of California. The Clerk shall also serve a copy of this order on Petitioner.

3. Respondent shall file with the Court and serve on Petitioner, within **ninety days** of the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the underlying state criminal record that have been transcribed previously and that are relevant to

1 a determination of the issues presented by the petition.

2 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
3 Court and serving it on Respondent within **thirty days** of the date the answer is filed.

4 4. Respondent may file a motion to dismiss on procedural grounds in lieu of an
5 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section
6 2254 Cases within **ninety days** of the date this order is filed. If Respondent files such a motion,
7 Petitioner shall file with the court and serve on Respondent an opposition or statement of non-
8 opposition within **thirty days** of the date the motion is filed, and Respondent **shall** file with the
9 court and serve on Petitioner a reply within **fifteen days** of the date any opposition is filed.

10 5. It is Petitioner's responsibility to prosecute this case. Petitioner is reminded that
11 all communications with the Court must be served on Respondent by mailing a true copy of the
12 document to Respondent's counsel. Petitioner must keep the court and all parties informed of
13 any change of address by filing a separate paper captioned "Notice of Change of Address." He
14 must comply with the Court's orders in a timely fashion. Failure to do so may result in the
15 dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure
16 41(b).

17 IT IS SO ORDERED.

18 DATED: 3/28/11


LUCY H. KOH
United States District Judge